

Appln. No.: 10/803,281
RCE w/Amendment dated July 17, 2007
In Reply to Office action of January 18, 2007

REMARKS

Claims 1-15 are pending in the application, and all have been rejected in the Office action of January 18, 2007. Claims 1, 6 and 11 are independent claims. Claims 2-5, 7-10 and 12-14 depend from independent claims 1, 6 and 11, respectively. Claim 15 depends from claim 14, which in turn depends from independent claim 11. Applicants respectfully request reconsideration of claims 1-15, in light of the following remarks.

Amendments to the Claims

Claims 1, 6, 10 and 11 have been amended to more clearly describe the claimed subject matter. Applicants respectfully submit that this amendment does not add new matter. By way of example, and without limitation, support for the amendments to the claims can be found in Figures 1, 3, 4, 6, 9, 11, 12, 14, 16 and 17, and in the descriptions associated with those figures.

Rejections Under 35 U.S.C. §102(b)

Claims 11 and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,024,573 ("Redding"). (1/18/2007 Office Action, pp. 2.) Applicants have amended Claim 11, and Claim 13 depends from Claim 11. Applicants respectfully submit that the rejection should be withdrawn because Redding fails to disclose each and every element of Claims 11 and 13, as amended.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir.

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1987); MPEP § 2131. The Office Action fails to demonstrate that Redding discloses each and every element of amended Claim 11 or Claim 13 (which includes every limitation of amended Claim 11).

For example, the Office Action does not identify any disclosure in Redding of “operating the refuse cart lifter still further to a dumping position wherein a substantial portion of the faceplate is located inward of the lower hopper edge.” Figure 9 of Redding does not show a considerable or significantly great portion of the faceplate located inward of the lower hopper edge. In fact, Figure 9 of Redding does not show a hopper edge at all. Even if one were to improperly assume that the figures in Redding were to scale and one tried to guess at the location of the lower hopper edge if it were shown in Figure 9, only a small portion of the faceplate appears to extend inward of the lower hopper edge. For example, Figures 7 and 8 of Redding depict the lower hopper edge as coinciding approximately with pivot connection 66 (see also Figure 4). Turning back to Figure 9, this approximation would mean the vast majority of the faceplate in the dumping position would remain located outward of, not inward of, the lower hopper edge.

Similarly, Claims 11-13 were rejected under 35 U.S.C. § 102(a) as being anticipated by United States Patent No. 6,503,045 (“Arrez”). (8/30/2006 Office Action, pp. 2-3.) Again, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros.*, 814 F.2d at 631; MPEP § 2131. The Office Action fails to demonstrate that Arrez discloses every

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element of Claims 11-13, as amended. There is no disclosure in Arrez of “operating the refuse cart lifter still further to a dumping position wherein a substantial portion of the faceplate is located inward of the lower hopper edge.” Indeed, in Figure 5 of Arrez it is clear that only the very tip of the faceplate extends inward of the baseplate, let alone any hopper edge, as opposed to the considerable or significantly great portion of the faceplate required to extend inward of the hopper edge by amended claims 11-13. Thus, Applicants respectfully submit that this rejection should be withdrawn.

Applicants respectfully submit that Claims 11-13 are not anticipated by the cited prior art references. Applicants respectfully request that the anticipation rejections presented in the 1/18/2007 Office Action be withdrawn and that the presently pending claims be allowed.

Rejections Under 35 U.S.C. §103(a)

Claims 1-10 were “rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. in view of Arrez et al.” (1/18/2007 Office Action, p. 3.) Applicants respectfully submit that the Office Action has fails to establish a case of *prima facie* obviousness with respect to the pending claims, as amended, for at least the reasons provided below.

M.P.E.P. §2142 states that to establish a *prima facie* case of obviousness, three basic criteria must be met. One of these three basic criteria is that “the prior art reference (or references when combined) must teach or suggest all the claim limitations.” M.P.E.P. §2142. Here, even in combination, the cited references do not teach or suggest all of the elements of amended independent Claim 1 or amended independent Claim 6.

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Independent Claim 1, and therefore dependent claims 2-5, now recite the limitation “wherein a substantial portion of the faceplate is capable of being rotated above and behind the baseplate when the lifting device is emptying a refuse cart.” Neither Redding nor Arrez teach or suggest this claim limitation. With regard to Redding, the Office Action incorrectly identifies the baseplate as (S). (1/18/2007 Office Action, p. 3.) The reference letter S in Redding refers to the hopper sill, not a baseplate. *See, e.g.*, Redding, Col. 2, lines 38-43. Moreover, Figure 9 of Redding does not even disclose a baseplate.

Even if one were to improperly assume that the figures in Redding were to scale and one tried to guess at the location of the rearmost portion of a baseplate if it were shown in Figure 9, only a very small portion of the faceplate - if any - would extend behind the baseplate. For example, Figure 7 of Redding depicts the rearmost edge of a structure bolted to the hopper sill as coinciding approximately with the rearmost portion of link arms 64. Assuming for sake of argument only that this structure could be considered a “baseplate,” this approximation would mean that all (or certainly the vast majority) of the faceplate in Figure 9 would remain in front of, not behind, the “baseplate.”

As discussed previously in regard to the anticipation rejections, Figure 5 of Arrez clearly shows that only the very tip of the faceplate, not a substantial portion of the faceplate, extends inward of the baseplate 62 when the lifter of Arrez is emptying a refuse cart. As neither Redding nor Arrez teach or suggest all of the claim limitations of Claims 1-5, Applicants

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respectfully submit that the obviousness rejection should be withdrawn and that Claims 1-5, as amended, are in condition for allowance.

Amended independent Claim 6, and therefore dependent claims 7-10, recite the limitation “wherein a substantial portion of the faceplate is capable of being rotated above and inward of the lower hopper edge when the lifting device is emptying a refuse cart.” Again, neither Redding nor Arrez teach or suggest this claim limitation. As discussed previously in regard to anticipation, Figure 9 of Redding does not disclose the location of the faceplate relative to the lower hopper edge, and an examination of other Figures in Redding indicates that only a small portion of the faceplate might extend inward of the lower hopper edge. Thus, Applicants respectfully submit that the rejection with respect to Claims 6-10 should be withdrawn.

Claims 14 and 15 were “rejected under 35 U.S.C. 103(a) as being unpatentable over Redding et al. as applied to claim 11 above, and in further view of Arrez et al.” (8/30/2006 Office Action, p. 4.) The Applicant respectfully submits that the Office Action has failed to establish a case of *prima facie* obviousness of Claims 14 and 15 for at least the reasons provided below.

M.P.E.P. §2142 states that “[t]o establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Even in combination, the cited references do not disclose all of the elements of dependent claims 14 or 15. Claims 14 and 15 include the following limitation of amended Claim 11: “operating the refuse cart lifter still further to a dumping position wherein a substantial portion

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of the faceplate is located inward of the lower hopper edge.” As discussed previously in regard to anticipation, neither Redding nor Arrez teach or suggest this limitation. Figure 9 of Redding does not disclose the location of the faceplate relative to the lower hopper edge, and an examination of other Figures in Redding indicates that only a small portion of the faceplate might extend inward of the lower hopper edge. Figure 5 of Arrez clearly shows that only the very tip of the faceplate, not a substantial portion of the faceplate, extends inward of the baseplate 62 when the lifter of Arrez is emptying a refuse cart. Thus, Applicants respectfully submit that the obviousness rejection to Claims 14 and 15 should be withdrawn, and Claims 14 and 15 are now in condition for allowance.

Applicants respectfully submit that Claims 1-10, 14 and 15 would not have been obvious in view of the cited prior art references. Applicants respectfully request that the obviousness rejections be withdrawn and that the presently pending claims be allowed.

Office Action Response to Arguments in 11/28/2006 Response and Amendment

Applicants disagree with the Office Action’s apparent characterization of “substantially” as simply to the smallest degree. For example, the Office Action states: “Regarding the rejections of claims 11-15 both cited references teach the refuse is dumped into the hopper at a location substantially inward of the lower hopper edge as defined by the applicant. If it were not the devices disclosed by both Redding et al. and Arrez et al. would dump their refuse on the ground, which they do not.” (1/18/2007 Office Action, p. 6.) This characterization ignores or reads out the claim limitation “substantially,” which was intended

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to indicate that the refuse was dumped considerably inward of the lower hopper edge, not simply inward such that refuse is not dumped on the ground.

Similarly, Applicants disagree with the Office Action's apparent characterization of "substantially behind" as almost behind. For example, the Office Action states: "Regarding claims 1-5, the applicant argues that neither reference cited teaches the upper portion of the faceplate as being capable of being rotated to a position where it is above and substantially behind the base plate. This limitation is clearly shown in Figure 5 of the Arrez et al. reference" (1/18/2007 Office Action, p. 5.) Yet, an examination of Figure 5 of Arrez clearly shows that only the tip of the upper portion of the faceplate is capable of being rotated behind the baseplate. Applicants disagree that "substantially behind" should be understood to mean almost behind. In any case, Applicants have amended their claims with the intention of more clearly describing the claimed subject matter.

Conclusion

Applicants submit that Claims 1-15 are patentable over the cited prior art and request withdrawal of the rejections set forth in the Office Action dated January 18, 2007. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned.

The Commissioner is hereby authorized to charge any other fees required by this submission or to credit any overpayment, to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

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Respectfully submitted,

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